

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

THERESA STEPHEN,

Plaintiff,

CASE NO. 1998-202

v.

ANTIGUA BREWERY, INC.,
BELLOWS INTERNATIONAL,
LTD. and CANEEL BAY, INC.,

Defendants.

ORDER

Before the Court is plaintiff's motion to join the Government Insurance Fund (the "Fund")¹ as a plaintiff in this action pursuant to Rule 19(a) of the Federal Rules of Civil Procedure.

Plaintiff contends that pursuant to 24 V.I.C. § 263, the Fund must be added as a plaintiff "so that it may subrogate its claim to that of the named plaintiff." 24 V.I.C. § 263 in pertinent part provides:

The injured workman or employee or his beneficiaries may not institute any action, nor may compromise any right of action they may have against the third person responsible for the damages, unless the Administrator [of the Worker's Compensation Administration] is a party to the action or agrees to the compromise, but the failure to join the Administrator shall not deprive the courts of jurisdiction over the claim or otherwise result in dismissal of the claim, so long as the injured worker or employee acknowledges

¹ The Fund was created for the purpose of insuring employers against liabilities and assuring compensation to persons so entitled. 25 V.I.C. § 265.

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that all sums due the Government Insurance Fund are secured by any recovery.

24 V.I.C. § 263 prohibits the institution of an action without including the Administrator as a party to the action. Once the action has been instituted, however, the provision provides that the injured worker must acknowledge that the sums owed to the Fund will be secured by the recovery. Here, plaintiff instituted this action without including the Administrator as a party to the action. Because the action has already been instituted, she is not required to join the Administrator, but must, pursuant to 24 V.I.C. § 263, acknowledge that all sums due to the Fund will be secured by any recovery she may realize. Accordingly, it is hereby

ORDERED that plaintiff's motion is DENIED; and it is further

ORDERED that plaintiff shall file, within 21 days of the date of this Order, a notarized statement expressly acknowledging that all sums due to the Fund will be secured by any recovery plaintiff may realize from this action.

S_____
RUTH MILLER
United States Magistrate Judge